

Application No. 10/823,412
Paper Dated: August 13, 2007
In response to USPTO correspondence of February 13, 2007
Attorney Docket No. 5391-043918

REMARKS

The Office Action of February 13, 2007 has been reviewed, and the Examiner's comments have been carefully considered. Claims 1-11, 13-14 and 21-25 are pending in this application, with claims 1, 14 and 21 written in independent form. The present Amendment amends claims 1 and 14, cancels claims 12 and 15-20, and adds new claims 21-25, all in accordance with the originally-filed specification.

New Claims 21-25

New claims 21-25 have been added. Basis for claim 21 can be found, for example, in the specification on page 4, lines 3-16 and page 10, lines 8-15, as well as in originally filed Figure 2. Basis for claims 22-25 can be found, for example, on page 17, line 27 through page 18, line 5. Accordingly, Applicant submits that no new matter has been added.

Objections to the Specification

The specification was objected to for including specific reference to the claims on page 3. The specific references to claims 1 and 15 have been deleted in accordance with the Examiner's instructions.

Applicant respectfully requests reconsideration and withdrawal of the objection to the specification.

Rejections Under 35 U.S.C. §102(b)

Claims 1-3, 9-11 and 13 presently stand rejected under 35 U.S.C. §102(b) as being anticipated by European Patent Application No. 0890368 A1 to Porro et al. (hereinafter "Porro"). Claims 1-3 further stand rejected under 35 U.S.C. §102(b) as being anticipated by European Patent Application No. 1180374 A1 to Ghell et al. (hereinafter "Ghell").

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As presently amended, independent claim 1 recites, in relevant part:

“at least one drain channel through which a diluting liquid obtained from the blood is expelled during purification of the blood, the drain channel being directly connected to the first inlet of the CO₂ removing means to supply the diluting liquid without submitting the diluting liquid to any filtering treatment during passage along the drain channel.”

Basis, for this amendment can be found, for example, in the specification on page 10, lines 8-15 as well as in Figure 2 of the specification as originally filed. Accordingly, no new matter has been added.

Neither Porro nor Ghell discloses or suggests at least one drain channel connected directly to the first inlet of the CO₂ removing means and through which a diluting liquid obtained from the blood is expelled during purification, without submitting the diluting liquid to any filtering treatment during passage along the drain channel as recited by amended claim 1. Accordingly, Applicant submits that independent claim 1 is patentable over Porro and Ghell, independently. Dependent claims 2-3, 9-11 and 13 depend directly or indirectly from independent claim 1 and are believed patentable for the reasons stated herein. Reconsideration and withdrawal of the rejections of claims 1-3, 9-11 and 13 are respectfully requested.

Rejections Under 35 U.S.C. §103(a)

Claims 4-8 presently stand rejected under 35 U.S.C. §103(a) as being unpatentable over Porro in view of U.S. Patent Publication No. 2002/0176798 to Linker et al. (hereinafter “Linker”).

Dependent claims 4-8 depend indirectly from independent claim 1. As previously discussed, Porro does not teach or suggest at least one drain channel connected directly to the first inlet of the CO₂ removing means and through which a diluting liquid obtained from the blood is expelled during purification, without submitting the diluting liquid to any filtering treatment during passage along the drain channel as recited by amended claim 1. Furthermore,

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Linker does not disclose or suggest a drain channel as presently claimed and, accordingly, does not rectify the deficiencies of Porro.

Applicant submits that neither Porro nor Linker, nor the combination of Porro and Linker, discloses or suggests at least one drain channel as presently claimed in amended claim 1. Reconsideration and withdrawal of the rejection of claims 4-8 are respectfully requested.

Claims 12 and 14 presently stand rejected under 35 U.S.C. §103(a) as being unpatentable over Porro in view of U.S. Patent Publication No. 2002/0077581 to Davidner et al. (hereinafter “Davidner”).

According to the Office Action, Porro teaches a blood treatment device as claimed in claims 12 and 14, except that Porro does not teach that a drain channel of the filtering means is connected to the first inlet of the CO₂ removing means. Davidner is relied upon as disclosing a blood treatment device comprising a blood filter with a drain channel for ultrafiltrate connected to a blood inlet of an oxygenator, i.e., CO₂ removing means to provide diluent blood. According to the Office Action, it would have been obvious to one of ordinary skill in the art to modify the device of Porro to connect a drain channel of the filtering means to the first inlet of the CO₂ removing means to provide ultrafiltrate as a diluent to the blood.

Dependent claim 12 has been canceled. The limitations of claim 12 have been included in independent claim 1. Both independent claim 1 and independent claim 14 each recite, in relevant part:

“removing means (23) to supply said diluting liquid to the CO₂ removing means (23) without submitting the diluting liquid to any filtering treatment during passage along the drain channel” (emphasis added).

As shown in Figure 1 of Davidner, blood exiting the hemoconcentrator 106 via outlet port 158 is subjected to filter 111 prior to entering the inlet of the oxygenator 104. The purpose of passing the blood through the filter 111 is to filter the ultrafiltrate for cytokines. Accordingly, even if Porro and Davidner were combined, the resulting combination would not teach all of the features recited in independent claims 1 and 14. Moreover, Davidner is directed

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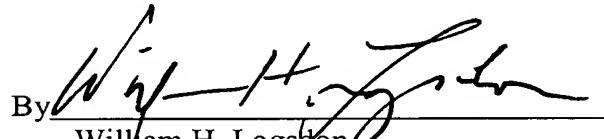
to a method and apparatus for retroperfusing cerebral venous vasculature with autologous venous blood. Accordingly, one skilled in the art would not look to the art of retroperfusion of ischemic cerebral tissue to provide a drain channel as described therein for use in a unit or method for simultaneous extrarenal blood purification therapy and respiration support therapy. Accordingly, independent claim 14 (as well as independent claim 1 including the limitation of prior dependent claim 12) are patentable over the cited art of record. Reconsideration and withdrawal of the rejection of claim 14 is respectfully requested.

Summary

Applicant respectfully submits that the presently claimed invention is patentably distinct over the above-identified prior art of record and that claims 1-11, 13-14 and 21-25 are in condition for allowance. The Examiner's reconsideration and favorable action with respect to claims 1-11, 13-14 and 21-25 are respectfully requested.

Respectfully submitted,

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